

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

STATE EMPLOYEES' ASSOCIATION OF
NEW HAMPSHIRE, INC.

Complainant :

and :

BOARD OF SELECTMEN,
TOWN OF DURHAM, NEW HAMPSHIRE

Respondent :

CASE NO. P-0707:3

DECISION NO. 81-23

APPEARANCES

Representing the Complainant, State Employees' Association:

Richard E. Molan, Esq., Counsel
Edward C. Levesque, Police Officer
Ward P. Freeman, SEA

Representing the Respondent, Town of Durham:

Thomas C. Dunnington, Jr., Esq., Counsel
Paul W. Gowen, Chief of Police
Alan Edmond, Administrative Assistant

BACKGROUND

The State Employees' Association of N. H., Inc. (SEA) representing a member of the Durham Police Department, Edward C. Levesque, filed an unfair labor practice complaint on February 5, 1981 against the town of Durham, its Board of Selectmen and its Administrative Assistant.

The charge alleged that the Town had taken certain disciplinary action with respect to Police Officer Levesque, a member of the bargaining unit; specifically, a letter of reprimand and a ten working day suspension and failure to pursue the grievance procedure as outlined in the existing contract, Article XIV, Par. 14.4.

A hearing was conducted on March 26, 1981 at which time SEA stated that the letter of reprimand was not proper, that the 10-day suspension was without just cause and that the Town had failed to pursue the grievance procedure to its conclusion as outlined in the contract. SEA had represented the Police Officer through the first two steps of the contract and grievance procedure but then

the Town refused to proceed with the third step which called for an Appeal Board.

The Town admitted to the action complained of in this matter but argued that the collective bargaining agreement, Article XII, Section 12.2 stated:

"The Town of Durham shall continue to exercise its right to establish, alter and carry out disciplinary procedures..."

thus removing disciplinary matters from the collective bargaining agreement and not subject to the grievance procedure and finally, that they never considered the matter grievable but rather a question of discipline reserved unto the Chief of Police. They further claimed that SEA was misinterpreting the contractual language.

A brief discussion on the filing times was presented by both parties.

FINDINGS

-- The time limits for certain action under the contract were extended by mutual agreement of the parties.

-- The Town did participate in the first two steps of the grievance procedure.

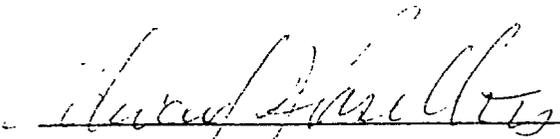
-- The Town refused to pursue the third step outlined in the procedure.

-- Interpretation of contract language and activities thereunder are clearly within the scope of the grievance procedure; this case presented a classic example of two parties to an agreement, disagreeing on the interpretation of the contractual language.

DECISION AND ORDER

After a careful review of the evidence and testimony presented, the Board finds as follows:

- A. The Board will not find unfair labor practice in this case at this time, however,
- B. the town of Durham is ordered to perform the obligations under the collective bargaining agreement and to pursue the grievance procedure through all the steps.


EDWARD J. HASELTINE, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 4th day of August, 1981.

By unanimous vote, Chairman Haseltine presiding, members Mayhew, Osman and Anderson present and voting. Also present, Executive Director LeBrun.